## ARKANSAS MUNICIPAL LEAGUE



# City Government 101 Who Does What at City Hall?

(5 Hours Core Certification Course)

January, 2016



### **Important Dates**

| 14-42-106  | Oath – within 10 days of election or appointment   |  |
|--|--|--|
| 14-43-501  | January organizational meeting   |  |
| Resolution for Establishing Procedural Rules (meeting dates) |  |  |
| 14-43-504  | First Class Mayor's report – within first 90 days each year                                |  |
| 14-58-302  | Mayor of First Class report – first 90 days  |  |
| 14-58-202  | Governing body adopts by February 1  |  |
| 14-59-115  | Duties of Municipal Treasurer – monthly report   |  |
| 14-59-116  | Financial statement published by April 1. Posted if no newspaper published in municipality |  |

#### **Election Filing Dates:**

Feb. 10 – Feb. 29 for Independents if ordinance req. early filing

March 1 Party Primary Election

July 29-Aug. 19 General Election for Independents

#### 14-42-106. Oath and bond required.

- (a) All officers elected or appointed in any municipal corporation shall take the oath or affirmation prescribed for officers by the Arkansas Constitution.
- (b) (1) Except as provided in subdivision (b)(2) of this section, the officers shall take their oaths before the Secretary of State or his or her official designee, any justice or judge, judge of the county court, clerk of the county court, clerk of the circuit court, or justice of the peace.
  - (2) The aldermen also may take their oaths before the mayor of the municipality.
- (c) The aldermen or council of a municipal corporation may require from the officers, as they think proper, a bond with good and sufficient security and with a proper penalty for the faithful discharge of their office and duty.
- (d) The council or aldermen shall have the power to declare the office of any elected or appointed person vacant who shall fail to take the oath of office or give the bond required in this section within ten (10) days of the first day of January after his or her election or within ten (10) days after he or she has been notified of his or her appointment. In such case, the council or aldermen shall proceed to appoint as in other cases of vacancy.

#### 14-43-501. Organization of governing body.

- (a) (1) The members of a governing body elected for each city or town shall annually in January assemble and organize the governing body.
- (2) (A) A majority of the whole number of members of a governing body constitutes a quorum for the transaction of business.
- **(B)** (i) The governing body shall judge the election returns and the qualifications of its own members.
  - (ii) These judgments of the governing body are not subject to veto by the mayor.
- **(C)** (i) The governing body shall determine the rules of its proceedings and keep a journal of its proceedings, and the journal shall be open to the inspection and examination of any citizen.
- (ii) The governing body may also compel the attendance of absent members in such a manner and under such penalties as it prescribes.
- (iii) The governing body may consider the passage of rules on the following subjects, including without limitation:
  - (a) The agenda for meetings;
  - (b) The filing of resolutions and ordinances; and
  - (c) Citizen commentary.
- (b) (1) (A) In a mayor-council form of government, the mayor shall be ex officio president of the city council and shall preside at its meetings.
- **(B)** The mayor shall have a vote to establish a quorum of the city council at any regular or special meeting of the city council and when his or her vote is needed to pass any ordinance, bylaw, resolution, order, or motion.
- (2) In the absence of the mayor, the city council shall elect a president pro tempore to preside over council meetings.
- (3) If the mayor is unable to perform the duties of office or cannot be located, one (1) of the following individuals may perform all functions of a mayor during the disability or absence of the mayor:
  - (A) The city clerk;
  - (B) Another elected official of the city if designated by the mayor; or
- **(C)** An unelected employee or resident of the city if designated by the mayor and approved by the city council.

(c) As used in this section, "governing body" means the city council in a mayor-council form of government, the board of directors in a city manager form of government, and the board of directors in a city administrator form of government.

#### RESOLUTION NO. 115-03

#### A RESOLUTION ESTABLISHING THE PROCEDURAL RULES FOR THE CITY COUNCIL OF THE CITY OF GREENWOOD FOR 2015

WHEREAS, the State of Arkansas requires each City Council to annually establish its procedural rules and, whereas, such rules are essential for the orderly conduct of council activities;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENWOOD, ARKANSAS, THAT THE FOLLOWING PROCEDURAL RULES ARE ADOPTED FOR 2015:

#### Section 1: Rules and Order of Business

The Council of the City of Greenwood will follow the procedural rules contained in the Arkansas Municipal League publication "Procedural Rules for the Municipal Official", dated June 1987.

#### Section 2: The Time and Location of Regularly Scheduled Meetings

- (A) Council Meetings: First Monday of each month at 7:00 p.m. at the City Hall.
- (B) The date, time and locations of regularly scheduled meetings may be changed by the Mayor with consent of the majority of the council members. The media and public will be notified of any changes in accordance with appropriate state laws.

#### Section 3: Special Meetings

In accordance with Ordinance 01-02 the Mayor or any three council members may call special meetings and set the time and place of such meetings. Voting by council is permitted at special meetings.

#### Section 4: Working Sessions

The Mayor or any three council members may schedule working sessions for the council at the time and location of their choosing. The media and public will be notified of all working sessions in accordance with applicable state laws.

Voting by the council is not permitted at working sessions. The Mayor and all Council members must be notified of any proposed working session.

#### Section 5: Agendas

#### (A) Meetings

- (1) The City Clerk shall prepare the agenda for council meetings. The City Clerk shall place such matters upon the agenda as may be requested by the Mayor, the City Attorney, any Council member or any Department Head.
- (2) The department head and committee heads or their representative should be present at all monthly council meetings, give a **brief** report summarizing their departmental/committee activities and make themselves available for questions from the public and council members. The committee reports shall be given before the business items are addressed and the department reports shall be given after the business items are addressed.
- (3) If there is a bid opening to take place, the responsible Department Head shall make it known to the Mayor and it shall be conducted as early as possible in the meeting. No voting is required to add the bid opening to the agenda.
- (4) At the citizens forum section of the meeting the Mayor will announce "This is the Citizens Forum, any citizen wishing to address the City about any subject is now permitted to speak." Any individual wishing to address the Council about a subject that is not on the agenda shall be permitted to speak during that period allotted for Citizen Communications at meetings. Each individual will be limited to five minutes. (Total 15 minutes per subject.)
- (5) The Mayor, the City Attorney, any council member or any Department Head requesting that a matter be placed on the agenda will provide the City Clerk's office with the title of the matter and with a short written summary of the topic and any supporting material no later than 5:00 p.m. on the Monday two weeks prior to the date of the Meetings.
- (6) Any matter presented to the City Clerk's office later than that time shall be placed on the agenda, unless Council objects, at a time called by the Mayor directly before the business items are addressed.
- (7) Those presenting items to be added to the agenda at the meeting shall state the topic to be added only, with no discussion. Discussion for that item will take place when the item is addressed during the business session.
- (8) The City Clerk will provide copies of the agenda unless a copy of the draft ordinance or resolution is provided to the City Clerk's office for inclusion with the agenda. Those with agenda items to be added at the meeting shall

- provide **nine** copies of any ordinances or resolutions to be presented to the Council, Mayor, City Clerk/Treasurer and City Attorney.
- (9) In the event of a holiday falling on a Monday, the above schedule will be shifted to the last two working days prior to the holiday.
- (10) During Council meetings, the Council will consider only those matters placed on the agenda.

#### (B) Special Meetings

The City Clerk/Treasurer will prepare agendas for special meetings and provide copies to all elected city officials and to the media and notify the media as required by state law. Whomever is calling the special meeting shall provide the Clerk with applicable documentation pertinent to the meeting being called.

PASSED BY A MAJORITY OF THE CITY COUNCIL OF THE CITY OF GREENWOOD, ARKANSAS ON THIS 5<sup>th</sup> DAY OF January, 2015.

| City Clerk/Treasurer: | Mayor: |  |
|-----------------------|--------|--|
|                       |        |  |
|                       |        |  |

#### 14-43-504. Powers and duties of mayor generally.

(a) The mayor of the city shall be its chief executive officer and conservator of its peace. It shall be his or her special duty to cause the ordinances and regulations of the city to be faithfully and constantly obeyed.

#### (b) The mayor shall:

- (1) Supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against them, and cause all their violations of duty or other neglect to be properly punished or reported to the proper tribunal for correction;
- (2) Have and exercise the power conferred on sheriffs, within the city limits, to suppress disorder and keep the peace; and
- (3) Perform such other duties compatible with the nature of his or her office as the city council may from time to time require.
- (c) The mayor shall report, within the first ninety (90) days of each year and at such other times as he or she shall deem expedient, to the council the municipal affairs of the city and recommend such measures as may seem advisable.
- (d) (1) In addition to the powers and duties already pertaining to that office, the mayor of any city of the first class shall be clothed with and exercise and perform the following:
- (A) A mayor may veto within five (5) days, Sundays excepted, after the action of the city council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his or her judgment is contrary to the public interest; and
- **(B)** (i) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city clerk, to be laid before that meeting, a written statement of his or her reasons for so doing.
- (ii) An ordinance, an order, or a resolution or part thereof, vetoed by the mayor is invalid unless, after the written statement is laid before it, the council, by a vote of two-thirds (2/3) of all the aldermen elected thereto, passes it over the veto.
- (2) The mayor does not have the power of veto in circumstances prescribed under  $\S 14-43-501(a)$  or  $\S 14-43-411(a)$ .

#### 14-58-302. Annual report by mayor.

- (a) The mayor of a first class city shall prepare and submit to the municipal governing body within the first ninety (90) days of each year a complete report on the finances and administrative activities of the city during the previous year.
- **(b)** The mayor shall also keep the governing body advised as to the financial condition and future needs of the city and make such recommendations as to him or her may be desirable.

#### 14-58-202. Adoption of budget.

Under this subchapter, the governing body of the municipality shall, on or before February 1 of each year, adopt a budget by ordinance or resolution for operation of the city or town.

#### 14-59-115. Duties of municipal treasurer.

- (a) Each municipal treasurer of this state or the designated representative that has been approved by the governing body shall submit a monthly financial report to the council or board of directors.
- **(b) (1)** Municipal treasurers shall maintain the accounting records prescribed in this chapter.
- (2) (A) (i) If the municipal treasurer does not comply with this chapter or requests that specific duties be assigned to another employee or contracting entity, the governing body of a municipality may assign specific duties outlined in this chapter to another employee, or it may contract for the services to be performed by a private, qualified person or entity.
- (ii) (a) (1) Before the governing body of a municipality assigns or contracts with a person or entity for the disbursing of funds, the governing body of a municipality shall establish by ordinance a method that provides for internal accounting controls and documentation for audit and accounting purposes.
- (2) The municipal treasurer shall approve the disbursement of funds before the private, qualified person or entity disburses the funds.
- **(b)** The governing body of a municipality shall ensure that the person or entity is adequately insured and bonded and conforms to best practices and standards in the industry.
- **(B)** (i) The governing body of a municipality may not assign duties relating to the collecting of funds to anyone other than an employee of the municipality.
- (ii) The governing body of a municipality may assign or contract with a private, qualified person or entity for the duties relating to the disbursing of funds for payroll, bonded debt, or construction projects funded with bond proceeds.

#### 14-59-116. Annual publication of financial statement.

- (a) (1) The governing body of each municipality shall publish annually a financial statement of the municipality, including receipts and expenditures for the period and a statement of the indebtedness and financial condition of the municipality. The financial statement shall be published one (1) time in a newspaper published in the municipality.
- (2) This financial statement shall be at least as detailed as the minimum record of accounts as provided in this chapter.
  - (3) This financial statement shall be published by April 1 of the following year.
- **(b)** In municipalities in which no newspaper is published, the financial statement shall be posted in two (2) of the most public places in the municipality.



January 13, 2016 10:00 to 10:45

11:00 to 11:30

Mark R. Hayes Director of Legal Services Arkansas Municipal League

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## You Are...

- A provider of good government.
- A provider of police and fire protection.
- A provider of parks and recreation.
- A provider of water and sewer systems.
- A provider of streets.
- A provider of...community.



- Roles
- Rules
- Relax

## Roles

- Where do you fit?
- Why is your role significant?
- Rely on the other parts of the "machine."

# Rules

- Keep order.
- •Simplify meetings and issues.
- Focus the debate.
- Basic law, including your ordinances!



- Three types
  - Mayor/Council
  - City Manager
  - City Administrator

# Mayor Council...

- There is a:
  - Mayor
  - And a
  - Council
- Redundant, but it's the critical distinction
- Also there is either a
  - Clerk
  - Recorder
  - Clerk/Treasurer OR
  - Recorder/Treasurer

## Quick Reference

- League Publications:
  - Guide for Municipal Officials/Mayoral Cities:
    - http://www.arml.org/pdfs/publications/MayorC ouncil\_Guidebook2013WEB.pdf (revised 2013)
  - Guide for Municipal Officials/Manager Cities:
    - http://www.arml.org/pdfs/publications/Guide book\_City\_Managers\_2013.pdf (revised 2013)
  - Municipal Law in Arkansas Questions and Answers:
    - http://www.arml.org/documents/MunicipalLa winArkansasFAQ\_2013\_WEB.pdf (revised 2013)
  - City and Town:
    - http://www.arml.org/publications\_city\_town.ht ml (full issues available online)



- City Manager Cities:
  - Arkadelphia
  - Hope
  - Hot Springs
  - Little Rock
  - Texarkana
- City Administrator Cities
  - Barling
  - Ft. Smith
  - Siloam Springs
- 8 out of 500 Cities and Towns



- Only permitted in cities of the first or second class with populations over 2,500.
  - See A.C.A. § 14-47-101 et seq.
- Features
  - See A.C.A. § 14-47-109
  - Board of Directors; not Council-Members
    - Generally, 7 Board Members unless reorganized under the "enabling act."
    - Directors choose a mayor from amongst themselves (no veto unless bestowed by vote of the people).
  - The Board then hires a City Manager
  - The City Manager preps the budget, day to day operations, hiring/firing (unless contrary to state law), etc.



- Any city of 2,500 or more.
  - See A.C.A. § 14-48-101 et seq.
- Board of Directors
  - See A.C.A. § 14-48-110
  - 7 generally-elected Directors
    - Directors can override the Mayor's veto with 5 votes
  - 1 generally-elected Mayor from all wards
    - Mayor is ceremonial head of city, presides over meetings, signs contracts and the like, and can veto except for personnel decisions
  - The Directors hire a City Administrator
  - Administrator supervises city employees, departments, agencies and offices



- Three branches of government:
  - Legislative
  - Judicial
  - Executive/Administrative



- Legislative...
  - Some similar words: legislate, legislature, legislator.
- City Council or City Board
  - Some similar words: council-member, alderperson, board-member.
- Operate lawfully in a lawfully called meeting with a quorum.
  - Typically, a majority of the city council or board of directors. *See, e.g.,* A.C.A. §§ 14-43-501(a)(2)(A); 14-47-123(a)(1).

## **Know Your Role...**

- Judicial...
  - Some similar words:
  - Justice
  - Judiciary.
  - Judge
  - Judgment...



- Executive/Administrative...
  - Some similar words: oh forget it!
- Mayor! (City Manager or Administrator)
  - 24/7 job
  - Day-to-day operations as opposed to council members (board members) holding a lawfully called and attended meeting



- Legislators/Council-Members (Board): legislate by setting policy.
- **Policy** comes in all forms: ordinances, resolutions, motions etc.
  - Examples: budget, employee handbook, record maintenance/retention etc.
- Mayors (Managers/Administrators): run the day to day operations and implement policy.
- Mayors (Managers/Administrators): supervise department heads and officers.
  - Examples: spending within the confines of the budget, counseling employees etc..



- CEO of city or town (sort of legislative and sort of executive)
- Ex-Officio member of council
- Presides over council meetings
- Mayor can vote sometimes (Cover later)
- Mayor can make up the quorum (A.C.A. §§ 14-43-501; 14-44-107; & 14-45-101(b))
- Mayor can call for a special meeting (yes, 3 council members can, too, and, yes, there must be an ordinance. A.C.A. § 14-43-502)
- Mayor signs ordinances along with Clerk/Recorder
- Mayor can veto (more on this later)



- Ark. Code Ann. § 14-58-201. Annual submission.
  - On or before December 1 of each year, the mayor of <u>all cities and incorporated towns</u> having the mayor-council form of government <u>shall submit</u> to the governing body of the city or town, for its approval or disapproval, a proposed <u>budget</u> for operation of the city or town from January 1 to December 31 of the forthcoming year.

## ROLES (rules): GOVERNING BODY SHALL PASS...(psst, council, board...you get the idea)

- Ark. Code Ann. § 14-58-202. Adoption.
  - . . . [T]he governing body of the municipality shall, *on or before February 1* of each year, *adopt a budget* for operation of the city or town.



- Ark. Code Ann. § 14-58-203. Appropriations and changes.
  - (a) The <u>approval</u> by the municipal governing body of the budget under this subchapter <u>shall</u>, for the purposes of the budget from time to time amount to an appropriation of funds which are lawfully applicable to the items therein contained.



- Ark. Code Ann. § 14-58-203. Appropriations and changes.
  - **(b)** The governing body <u>may alter or</u> <u>revise</u> the budget and unpledged funds appropriated by the governing body for any purpose may be subsequently, by action of the governing body, appropriated to another purpose, subject to the following exceptions:

## **BE CAREFUL**

### EXCEPTIONS

- (1) Funds resulting from taxes levied under statutes or ordinances for specific purposes may not be diverted to another purpose;
  - (ILLEGAL EXACTIONS)
- (2) Appropriated funds may not be diverted to another purpose where any creditor of the municipality would be prejudiced thereby.
  - (CONTRACT LAWSUITS)



- 14-43-313. City clerks and attorneys generally.
  - "The city clerks and the city attorneys in cities of the first class *shall* . . . receive such salary as is prescribed by ordinance in each of these cities."
- 14-43-316. City clerk, treasurer, or clerk-treasurer in mayor-council cities of fewer than 50,000. Only allowed in cities of the first class (see A.C.A. § 14-43-316(a))
  - **(c)** The city clerk and city treasurer, or city clerk-treasurer shall . . . receive a salary as is prescribed by ordinance in each of these cities.
- Cities of the second class and incorporated towns...lucky you!



- Report, report, report:
  - Within the first 90 days of the year, to the council the municipal affairs of the city; recommending such measures as may be advisable. *See* ACA §§ 14-43-504, 14-58-302.
    - I suggest monthly financial reports. (14-59-115 Treasurer is required to do a monthly report)
      - · What do you do? Monthly, weekly...
    - The better informed the council is, the better the budget.
- (and don't forget the shalls: submit, submit, submit)
  - Submit the budget, approve the budget, and spend within the budget! A.C.A. §§ 14-58-201; 14-58-202; 14-58-203

#### Roles (Rules): Council

#### COUNCIL:

- PASS THE BUDGET! SHALL!!
- What to Do:
  - Be well informed: read the financial statements early and often.
  - Ask the mayor for specific department needs.
  - Look at your long term plans and needs.
  - Meet and study long before the date of passage.

# Roles: Legislative...Council Duties

#### POLICY

- Management/Control money, property and policy
- Finances
- Property (real/personal)
- Set Policy (written and by practice)

#### PROCEDURE

- Set procedures for purchases up to twenty-thousand (\$20,000) (or over \$20,000 for 2<sup>nd</sup> Class cities and Inc. Towns, see A.C.A. § 14-58-303(b)(1)(A)-(B)).
- Set time/place for meetings <u>and</u> rules (January meeting)
- Know the FOIA, public meetings etc.
- Set salaries for everyone: Mayor, Council, Employees, etc. (Ark. Const. amend. 56, § 4; A.C.A. § 14-43-409).
- Salary may be increased during your term, but may not be reduced unless requested by official (A.C.A. § 14-42-113)

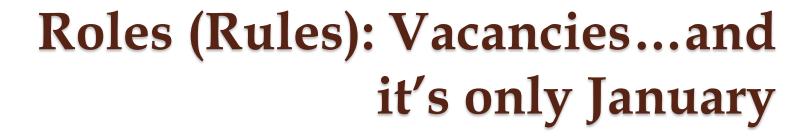
# Roles (Rules): Vacancies...and it's only January

#### Hold over –

- Ark. Const. Art. 19, § 5: All officers *shall* continue in office after the expiration of their official terms, *until their successors are elected and qualified.*
- January 1... who was there on December 31<sup>st</sup>?!

#### Mayor's vacancy -

- Cities of the 1<sup>st</sup> class (A.C.A. § 14-43-401)
  - Less than 1 year Council appoints the Mayor's successor
  - More than 1 year Special Election to fill the vacancy
- Cities of the 2<sup>nd</sup> class (A.C.A. § 14-44-106)
  - Council: appoint or special election.
- Incorporated towns (A.C.A. § 14-45-103)
  - Council: appoint or call for special election



- Alderman's vacancies -
  - Cities of the 1<sup>st</sup> class (A.C.A. § 14-43-411)
    - Under 20K? City council appoints (quorum of whole council shall remain in order to fill the vacancy) (mayor cannot veto).
    - 20K or more and more than 1 year? Appoint or Special Election
    - 20k or more and less than 1 year? City council appoints
  - Cities of the 2<sup>nd</sup> class (A.C.A. § 14-44-104)
    - Council appoints no veto

Incorporated Towns, (A.C.A. § 14-45-103)

Council appoints



- CLERK,
- RECORDER,
- TREASURER,
- CLERK-TREASURER,
- RECORDER-TREASURER



- The clerk, recorder...HANDBOOK
- The AML Handbook.
  - http://www.arml.org/pdfs/publications/MayorCouncil\_ Guidebook2013WEB.pdf (revised 2013)
  - http://www.arml.org/pdfs/publications/Guidebook\_Cit y\_Managers\_2013.pdf (revised 2013)



- Who's Who?
  - Department Heads vs. Non-Department Heads
  - Non-Department Heads are those who aren't department heads
- State Law dictates who appoints and removes department heads.
  - No State Law for non-department heads.
  - Non-department heads are a matter of local policy—it's up to you!

## Department Heads?! Appoint...Remove?! Local Policy?!

#### Department Heads:

- What It Means:
  - Appoint = Hire
  - Remove = Fire
- A.C.A. § 14-42-110
  - Department heads are appointed and removed by the mayor
  - But... the council can over-ride with a two thirds vote
  - But... the council CANNOT appoint and remove department heads



- Non-Department Heads
  - Non-department heads are a matter of local policy
    - What does <u>your</u> policy say?
  - What? No policy?!
    - What's your practice? And let's carefully take a look...
    - Recommendations versus decisions...
  - Who's actually hiring and firing?!



- Non-Department Head, continued
  - Non-department policy or practice...be careful
    - Council, legislative policy maker and legislative immunity
  - Mayor, elected to run the day to day operations
    - Mayor makes contracts
    - Employment is a contract
    - Maybe only the mayor is entitled to hire/fire
    - MAYBE means maybe!
  - 9th Grade civics...

# Roles: Final Word on Appoint and Remove

- Mayors may appoint:
  - Building Officials (A.C.A. § 14-56-202)
  - Library Board (A.C.A. § 13-2-502)
  - Director of Public Safety (A.C.A. § 14-42-422)
  - Health Officers (A.C.A. § 14-262-102)
  - Airport Commission (w/council approval)
     (A.C.A. § 14-359-101 et seq.)
  - Parks/Recreation Commission (w/council approval) (A.C.A. § 14-269-302)
  - Marshall (A.C.A. § 14-44-111)



- Some duties or roles are the same for all department heads.
- Some, however, change depending upon the department in question.
- Some change from city to city.
  - Hint/Suggestion: read your ordinances, policies, handbooks, notes, memos, gum wrappers etc..
  - You just might learn what your role is and ISN'T.



- City budget/department budget.
- Bidding and purchasing laws.
- Employee handbook and related policies and ordinances.
- "At Will Employment Doctrine"
- Working knowledge of labor laws (FLSA, FMLA, ADAAA, etc.).
- Specific laws, rules and regulations related to their department.
- Day to day operations.
- Managerial skills and education.



- A.C.A. §§ 14-52-101 through 102.
  - Covers how the department was created, general powers, holiday pay, vacation, sick leave, fees etc.
- Commission on Law Enforcement Standards and Training:

http://www.clest.org/oles/Pages/default.aspx.

- Various certification requirements and standards.
- See also A.C.A. § 12-9-101 and following, commission powers, duties etc.
- A.C.A. § 12-2-209: Training Cost Reimbursement.
- A.C.A. §§ 12-9-301 through 308: Auxiliary Officers.
- A.C.A. §§ 12-9-601 through 603: Officer employment, appointment, or separation.



- A.C.A. §§ 12-10-301 through 324: The Arkansas Public Safety Communications Act of 1985.
- A.C.A. § 12-12-103: Pawn Shop Reporting.
- A.C.A. §§ 12-12-901 through 922: Sexual Offender Registration Act of 1997.
- A.C.A. §§ 12-12-1401 through 1405: Racial Profiling Act of 2003.
  - Note that the League has a publication and policy and that many of the training and reporting requirements are yearly.
- A.C.A. §§ 12-13-101 through 116: The Fire Prevention Act.
- General working knowledge of policing and arrest practices, policies, customs, weapons, etc.

#### Fire Chief

- A.C.A. §§ 14-53-101 through 112.
  - Covers how the department was created,
  - General powers,
  - Hours,
  - Holiday pay,
  - Vacation,
  - Sick leave, etc.
- A.C.A. §§ 12-13-101 through 116: The Fire Prevention Act.
- General working knowledge of fire fighting practices, policies, customs, equipment, etc.



- Certification requirements.
- Working knowledge of state and federal health and safety regulations and laws.
- Working knowledge of storm water laws and regulations.
- Working knowledge of state and federal pollution and ecology laws, policies and regulatory entities.



- Working knowledge of local, state and federal law on weed lots, clean up, condemnation, etc..
- Working knowledge of local court system including but not limited to city citation authority.
- Code enforcement officers.
- Animal control.
- Working knowledge of bidding and purchasing laws.

#### What is a quorum?

- For City Council governments
  - Cities of the First & Second Class majority of the whole number of alderman is a quorum. ACA §§ 14-43-501; 14-44-107. (mayor can be counted)
  - Incorporated Towns majority of the whole number of alderman is a quorum. ACA § 14-45-101.
- For City Administrator/Manager cities
  - A majority of the elected membership of the board is a quorum for the transaction of business. ACA § 14-47-123.

## Regular council meetings

- Held at regular intervals
  - Bi-weekly
  - Monthly
  - Quarterly (not suggested)
- Provide a time and a place for the meeting.
- All meetings must be open to the public. *See, e.g.,* A.C.A. § 14-43-502(b)(1)(B).

## Special council meetings

- The mayor, or any three (3) council members of a town may call for a special meeting. *See, e.g.*, A.C.A. § 14-43-502(b)(1)(B).
- Special meetings may only be called as provided by ordinance. See, e.g., id. (work sessions... a special word)
- MUST be open to the public. See, e.g., A.C.A. § 14-43-502(b)(2)(A) and 25-19-106

## Passing an ordinance

- A word or two on emergency ordinances . .
- Separate vote on emergency clause is required.
  - Must be an emergency.
  - Clause must articulate the emergency.
  - (mayors can't vote on emergency clause AG OP 96-155)

### Passing an ordinance

- Each ordinance is limited to ONLY one subject. A.C.A. § 14-55-201.
- Reading Requirement
  - Ordinances must be read on three (3) different days. A.C.A. § 14-55-202.
  - Two-thirds of the council membership may suspend the reading requirement. *Id*.
  - If the reading requirement is suspended, read the ordinance once, then proceed to vote on the ordinance at the same meeting.

- Majority vote enacts an ordinance. A.C.A. § 14-55-203(b).
- Mayor calls the vote, but does not participate in the voting process unless vote is needed to pass.
- The yea's and nay's are recorded. A.C.A. § 14-55-203(a).
- Applies to any resolutions or orders for the appropriation of the city's money. A.C.A. § 14-55-204.
- Once enacted, all ordinances shall be recorded in a book kept for that purpose. A.C.A. § 14-55-205.

- Notice Requirement (A.C.A. § 14-55-206)
  - All ordinances of a general or permanent nature imposing any:
    - Fines, Penalties, OR Forfeitures
  - Must be published in some newspaper of general circulation in the municipality.
    - If no newspaper, post the ordinance in five (5) of the most public places in the city.
  - Failure to provide notice: "Life never breathed into the ordinance"
    - Citizen can say "I didn't know!" . . . and the court will agree.

- Notice Requirement (cont'd.)
  - Ordinances establishing rules and regulations for:
    - Zoning
    - Construction of buildings
    - Plumbing
    - Electrical wiring, AND
    - These Regulations/Rules are published as a code in book form

- Ordinance may reference the title of the code without further publication or posting.
- However, three (3) copies shall be filed for use and examination by the public in the city clerk's office.
- Failure to provide notice is a sufficient defense to any suit or prosecution for violating the rules and regulations.

#### Effective Date

- Ninety-one (91) days after passage by the governing body of the city or town. *See* A.C.A. § 14-55-203(c)(1)(A).
- Unless by ordinance set between 30-90, id.
- Ordinances that are NOT of a general or permanent nature are effective on the date of passage, unless otherwise specified by the ordinance. *See* A.C.A. § 14-55-203(c)(2).

- Effective Date (cont'd.)
  - Referendum deadline: 60 days! See Act 1688 of 2015 (ACA 14-47-124 and 14-55-304)
  - Un-sure about how this may get tested/used.
  - A majority vote repeals the ordinance.

- Emergency Clauses (Ark. Const. art. 5, §
   1).
  - Council wants an ordinance of a general or permanent nature to take effect immediately.
  - What is required?
    - Must be necessary for the preservation of the public peace, health, and safety.
    - In the ordinance, state WHY the emergency clause is necessary for the public's peace, health, and safety.
      - You <u>MUST</u> state facts that give rise to the emergency.
    - Two-thirds of the *roll call vote* of the ordinance is required to pass.
    - Mayor may not vote on the emergency clause.

# The mayor's vote

- A mayor may vote, when the mayor's vote is necessary for passage. ACA §§ 14-43-501; 14-44-107; 14-45-105.
- Tie sounds like the only time necessary to vote, but it isn't.
  - 6 member council example.
  - 4 show for the meeting, but only three vote yes. You get the idea.

# The mayor's vote

- The Mayor <u>may not</u> vote on the following:
  - Emergency clauses
  - To amend or repeal an initiative measure enacted by a vote of the people.
  - Whenever the statute calls for a vote of those "elected to" the council.

#### Understanding the veto

- What does veto mean?
  - According to Mr. Webster:
  - "A power of one department or branch of a government to forbid or prohibit finally or provisionally the carrying out of projects attempted by another department."

#### Understanding the veto, cont'd.

- Mayor can veto an ordinance, resolution, order, motion.
- Mayor must veto within **5 days**, **in writing**, and presented at the next council meeting. ACA §§ 14-43-504; 14-44-107; 14-45-105.

#### Understanding the veto, cont'd.

- Statutes do not set forth a procedure to document, so, for example:
  - Veto "on the record" at council meeting (recorded in minutes); OR
  - File a written copy with the clerk or recorder with a date stamp.



- The major difference is as follows:
  - **Commissions** are creatures of state law that cities or towns create under the confines of that state law (AKA: a statute).
  - **Committees** are created locally and are not found in state law.
- Thus:
  - what *statute did you use* to create your commission, AND
  - what *do you have in writing* that establishes your committee(s).

# Commissions

- How are they created?
  - By your city, using a state statute.
- Examples:
  - Airport commission (A.C.A. § 14-359-104)
  - Parks and Recreation commission (A.C.A. § 14-269-104)
  - Water commission (A.C.A. § 14-199-402)
  - Wastewater commission (A.C.A. § 14-230-103)
  - Civil Service commission
     (A.C.A. § 14-51-201 et seq.)



- Municipal Airport Commission
  - Enact by majority vote of the council;
  - Creating a commission;
  - Of 7 citizens;
  - Who are qualified electors in the state.
- Requirements
  - 1 must be fully experienced in aviation
    - Means: Holding a pilot's license
    - BUT: City may waive, if no pilot is willing or able to serve.
  - Only 1 may have a financial interest in an aeronautical enterprise while serving.



- Parks & Recreation Commission
  - Can consist of 3, 6, or 9 members
    - 1/3 must serve for a term of 1 year
    - Another 1/3 must serve for a term of 2 years
    - The last 1/3 must serve for a term of 3 years
  - BUT, replacement members serve 3 year terms
- Initial appointees are named by the council
  - BUT, successor members are selected by the remaining members of the commission.
  - Members only need to be a qualified elector
    - They do not have to be a resident of the municipality
  - They cannot be paid for their service.



#### Civil Service Commission

- By ordinance, "name five (5) upright and intelligent citizens of [your city]."
- Terms of Office:
  - 1 until first Monday in April of 2<sup>nd</sup> year
  - 1 until first Monday in April of 4<sup>th</sup> year
  - 1 until first Monday in April of 6th year
  - 1 until first Monday in April of 8th year
  - AND, 1 until first Monday in April of 10<sup>th</sup> year
- Can add two more, see ACA § 14-51-201
- Requirements
  - Must be citizens of Arkansas
  - Residents of the city for more than 3 years
  - Qualified electors of the city at all times during service
  - Cannot hold, or be a candidate for, political office



# • STEPS FOR UNDERSTANDING YOUR COMMISSION:

- Always start with the relevant state statue.
- Then read the ordinance.
- Then read the commission minutes.
- Then discuss with chair or other relevant folks.



- Cities of the First Class (ACA § 14-58-301)
  - City council may appoint 1 or more committees, to be composed from its membership
  - May also create 1 or more departments, fixing compensation and manner of employment
    - BUT, watch out: ultimately departments & compensation are only within the mayor or the council's authority.
    - NOT a committee's.
- City Administrator Cities (ACA § 14-48-117(5)(B))
  - Board may appoint 1 or more committees to be selected from its membership
  - Can also create any new office or department
  - Appointed person to the new office or department reports to city administrator.
    - AGAIN, watch out: Some departments can only be created by the Board.
    - NOT a committee.



- Remember, these are created locally.
  - Find the writings that created them.
  - If there aren't any,
  - draft some!
- Several AG's opinions that you should read:
  - 95-195: Creation of committees is a legislative function
  - 95-248: In a city manager form of government, service of a board member on a committee is generally disfavored; they cannot serve on a committee that exercises ministerial or administrative powers (which almost all committees do).
  - 2004-198: Committee cannot be used to hire Chief of Police, or to determine the Chief's salary — those responsibilities are left to the mayor and the city council, respectively.
  - 2009-138: Mayor may veto council's creation of a commission by ordinance.



- Committees are advisory only.
  - Cannot vest them with powers contra to state law (i.e.: council sets budget, can't vest that power in a committee).
  - Also, in all likelihood your committees have been subject to the home rule issue previously discussed.
- Must keep the legislative thread and not go outside that scope, regardless of home rule.
  - Again, it's critical that the council/board have established the make up and duties of the committee system.

# **Committees**

- To summarize, they are...
- Bodies created to:
- Study
- And make recommendations to the legislative body



- A.C.A. 14-43-501
- First meeting in January; ORGANIZE!
- AML Procedural Rules
- Regular Meeting Dates and Times
- Agenda Setting
- Quorum
- Voting



- Thanks for your attendance...
- And good questions.
- We're honored to represent you!

- Mark R. Hayes
- mhayes@arml.org
- 501-978-6102

## Laws that Make Us Unique

21-9-301 Tort liability – Immunity Declared

Sales Tax Laws

Annexation Laws

Turnback

14-43-601 Home Rule

#### 2015 State Turnback Funds

|            |                | Actuo          | il Totals Pei | <sup>r</sup> Capita |                 |                 |
|------------|----------------|----------------|---------------|---------------------|-----------------|-----------------|
|            | STREET         |                | SEVERANCE TAX |                     | GENERAL         |                 |
| MONTH      | 2014           | 2015           | 2014          | 2015                | 2014            | 2015            |
| January    | \$5.1428       | \$4.8662       | \$0.3163      | \$0.5728            | \$1.9533        | \$2.0995        |
| February   | \$4.5811       | \$4.8562       | \$0.4833      | \$0.4599            | \$1.0052        | \$1.0921        |
| March      | \$4.7165       | \$5.1898       | \$0.4463      | \$0.2339            | \$1.0055        | \$1.0909        |
| April      | \$4.8363       | \$4.7309       | \$0.5347      | \$0.6375            | \$1.0055        | \$1.1417        |
| May        | \$5.1527       | \$5.2251       | \$0.5897      | \$0.2547            | \$1.0053        | \$1.0918        |
| June       | \$4.9881       | \$5.2410       | \$0.6126      | \$0.2738            | \$1.0050        | \$1.0920        |
| July       | \$5.5230       | \$5.3082       | \$0.5581      | \$0.6600            | \$3.9543        | \$2.9748        |
| August     | \$4.9486       | \$5.0259       | \$0.6130      | \$0.2560            | \$1.0932        | \$0.9641        |
| September  | \$5.0410       | \$5.3748       | \$0.5763      | \$0.2632            | \$1.0910        | \$1.0791        |
| October    | \$5.1889       | . \$5,2322     | \$0.5542      | \$0.2767            | \$1.0930        | \$1.0707        |
| November   | \$4.9326       | \$5.0931       | \$0.4906      | \$0.2797            | \$1.0928        | \$1.0772        |
| December   | \$4.8110       | \$4.8776       | \$0.4013      | \$0.2499            | \$1.0919        | \$1.0776        |
| Total Year | \$59.8626      | \$61.0210      | \$6.1764      | \$4.4180            | \$16.3960       | \$15.8515       |
|            |                |                |               |                     |                 |                 |
|            |                | Actua          | al Totals Pe  | r Month             |                 |                 |
|            | STRI           | STREET SEV     |               | ICE TAX             | GENERAL         |                 |
| WONTH      | 2014           | 2015           | 2014          | 2015                | 2014            | 2015            |
| January    | \$9,666,249.40 | \$9,159,751.23 | \$594,574.44  | \$1,078,253.79      | *\$3,671,282.93 | *\$3,951,880.56 |
| February   | \$8,610,432.52 | \$9,140,972.61 | \$908,313.92  | \$865,620.02        | \$1,889,234.55  | \$2,055,766.00  |
| N/Jarch    | \$9.964.031.20 | \$0.768.800.51 | ¢939 937 05   | \$440 227 Q4        | \$1,880,013,07  | ¢2 052 276 13   |

| reseas services of distributions |                  |                  |                 |                |                  |                   |  |  |  |
|----------------------------------|------------------|------------------|-----------------|----------------|------------------|-------------------|--|--|--|
|                                  | STR              | EET              | SEVERANCE TAX   |                | GENERAL          |                   |  |  |  |
| MONTH                            | 2014             | 2015             | 2014            | 2015           | 2014             | 2015              |  |  |  |
| January                          | \$9,666,249.40   | \$9,159,751.23   | \$594,574.44    | \$1,078,253.79 | *\$3,671,282.93  | *\$3,951,880.56   |  |  |  |
| February                         | \$8,610,432.52   | \$9,140,972.61   | \$908,313.92    | \$865,620.02   | \$1,889,234.55   | \$2,055,766.00    |  |  |  |
| March                            | \$8,864,931.29   | \$9,768,890.51   | \$838,837.95    | \$440,227.94   | \$1,889,913.97   | \$2,053,376.13    |  |  |  |
| April                            | \$9,090,103.48   | \$8,905,034.06   | \$1,005,050.29  | \$1,199,954.61 | \$1,889,913.97   | \$2,149,094.75    |  |  |  |
| May                              | \$9,684,675.50   | \$9,840,348.46   | \$1,108,429.75  | \$479,664.03   | \$1,889,592.55   | \$2,056,091.57    |  |  |  |
| June                             | \$9,380,093.69   | \$9,870,151.62   | \$1,151,947.00  | \$515,640.06   | \$1,889,914.20   | \$2,056,559.07    |  |  |  |
| July                             | \$10,386,236.87  | \$9,996,770.39   | \$1,049,503.01  | \$1,242,957.21 | **\$7,436,192.77 | ***\$5,602,259.11 |  |  |  |
| August                           | \$9,310,016.61   | \$9,465,188.42   | \$1,153,167.19  | \$482,195.54   | \$2,056,570.50   | \$1,815,712.03    |  |  |  |
| September                        | \$9,483,759.74   | \$10,122,118.61  | \$1,084,169.71  | \$495,609.13   | \$2,052,581.22   | \$2,032,276.34    |  |  |  |
| October                          | \$9,763,094.43   | \$9,866,818.54   | \$1,042,826.36  | \$521,753.79   | \$2,056,448.50   | \$2,019,155.56    |  |  |  |
| November                         | \$9,282,963.15   | \$9,604,609.53   | \$923,263.56    | \$527,387.24   | \$2,056,540.00   | \$2,031,292.21    |  |  |  |
| December                         | \$9,054,075.63   | \$9,198,069.64   | \$755,208.69    | \$471,202.66   | \$2,054,945.78   | \$2,032,217.62    |  |  |  |
| Total Year                       | \$112,576,632.31 | \$114,938,723.62 | \$11,615,291.87 | \$8,320,466.02 | \$30,833,130.94  | \$29,855,680.95   |  |  |  |

<sup>\*</sup> Includes \$2 million appropriation from the Property Tax Relief Fund

<sup>\*\*</sup> Includes \$3,516,800.29 supplemental and \$2 million appropriation from Category B of Budget Stabilization for July 2014

<sup>\*\*\*</sup> Includes \$3,516,801.52 supplemental for July 2015

**HISTORY:** Acts 1969, No. 165, § 3; A.S.A. 1947, § 12-2903; Acts 1987, No. 590, § 1; 1987, No. 1064, § 1; 1989 (3rd Ex. Sess.), No. 47, § 1.

regulations that are equal to or greater than those established by the state concerning emergency medical services, emergency medical technicians, ambulances, and ambulance companies.

**(B)** The standards, rules, or regulations shall not be less than those established by the state for the rating of the service offered.

**HISTORY:** Acts 1971, No. 266, § 2; 1981 (1st Ex. Sess.), No. 23, § 7; A.S.A. 1947, § 19-1043; Acts 2011, No. 1187, § 1.

#### 14-43-602. Authority generally.

- (a) A municipality is authorized to perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs, including, but not limited to, the power to tax.
- **(b)** The rule of decision known as "Dillon's Rule" is inapplicable to the municipal affairs of municipalities.

**HISTORY:** Acts 1971, No. 266, § 1; A.S.A. 1947, § 19-1042; Acts 2011, No. 1187, § 2.

#### 14-43-603. Felonies.

No municipality may declare any act a felony.

HISTORY: Acts 1971, No. 266, § 3; A.S.A. 1947, § 19-1044.

#### 14-43-604. Gambling.

A municipality may not authorize gambling except as provided by state law.

**HISTORY:** Acts 1971, No. 266, § 3; A.S.A. 1947, § 19-1044; Acts 2011, No. 1187, § 3.

#### 14-43-605. Alcoholic beverages.

No municipality may authorize the sale or consumption of alcoholic beverages.

**HISTORY:** Acts 1971, No. 266, § 3; A.S.A. 1947, § 19-1044.

#### 14-43-608. Regulation of prices.

- (a) No municipality shall have the power to regulate prices for goods, rentals, or services sold or performed within the municipality by individuals or firms.
- **(b)** Nothing in this section shall prohibit municipalities from establishing prices for goods, rentals, or services furnished by, or performed by, the municipality or an instrumentality thereof.

**HISTORY:** Acts 1971, No. 266, § 4; 1971, No. 537, § 1; A.S.A. 1947, § 19-1045.

#### 14-43-609. Public utilities and carriers.

The provisions of this subchapter shall not repeal, limit, modify, or affect any of the powers conferred upon municipalities to regulate, in the manner prescribed by law, the rates or charges to be made for services rendered in the municipality by any regulated public utility or carrier operating under franchise issued by the municipality, including without limitation any of the following:

- (1) Electric, gas, or water utilities;
- (2) Telephone or telegraph companies;
- (3) Taxicabs;
- (4) Municipal bus companies; or
- (5) Other utilities or carriers operating under public service franchise issued by the municipality.

**HISTORY:** Acts 1971, No. 266, § 4; 1971, No. 537, § 1; A.S.A. 1947, § 19-1045; Acts 2011, No. 1187, § 4.

#### 14-43-610. Reservation of state power.

Nothing in this subchapter shall limit the power reserved to the General Assembly to specifically limit the exercise of any powers, functions, and authority granted in this subchapter.

HISTORY: Acts 1971, No. 266, § 5; A.S.A. 1947, § 19-1046.

## The Freedom of Information Act

Ryan Owsley

Made Simple.

# FOIA Overview—3 Step Approach

Step 1: Is entity covered?

Step 2: Is the record/meeting covered?

• Step 3: Are there any exemptions?

## The Freedom of Information Act

Step 2: Is the record covered?

• definition
Identifying
Public
Records
• evidence

Rule governing release

Step 2: Is the record covered?

# Public records—definition



- What is a "public record"?
  - (1) Writings, sounds,
     electronic info, or videos that
  - (2) are kept
  - (3) that constitute a record of the performance or lack of performance of official functions
  - Examples: emails, job applications, personnel files, some job evaluations

## Public Records—evidence

- The content
- The presumption:
  - (1) maintained in public offices or by public employees
  - (2) within the scope of their employment
- Rebutting the presumption
  - record doesn't reflect the "performance or lack of performance of official functions."
  - Content based

# Public Records—rule

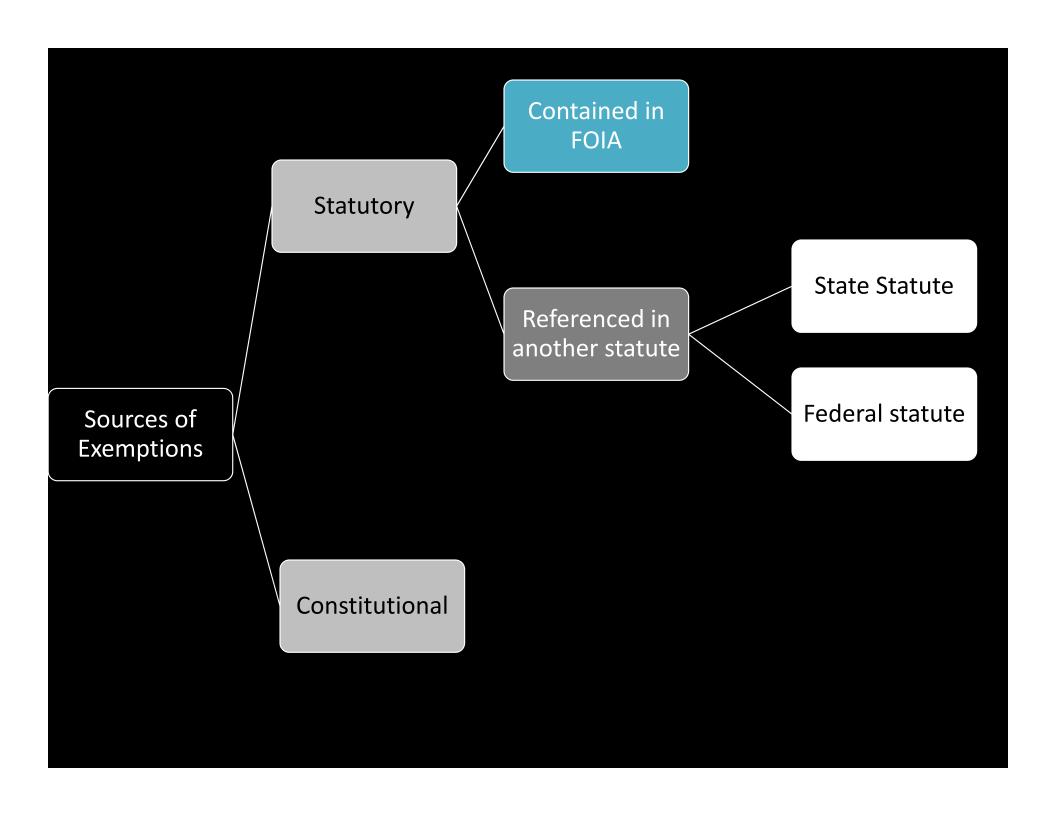
General rule:



All "public records" must be disclosed unless exempt

## The Freedom of Information Act

Step 3: Records Exemptions.



## Step 3: Some records exceptions

#### **Personnel** records

&

Employee evaluation records

# Step 3: Some records exceptions Evaluation records

 Definition: any record created by (or at the behest of) employer to evaluate an employee

Stance: "Must be withheld, unless...."

Test: unless...

Suspended or fired (level of discipline)

- Final administrative resolution (finality)
- The records formed a basis for the decision (basis); and
- There's a compelling public interest in the disclosure (compelling public interest).

# Step 3: *Some* records exceptions *Personnel records*

- Definition: virtually all records pertaining to the individual employee that aren't evaluation records
- Stance: "It must be <u>disclosed</u>, unless...."
- Test: unless doing so constitutes a "clearly unwarranted invasion of personal privacy"

# Clearly unwarranted test

- Step 1: Identify the privacy interest
  - Test: intimate or personal or embarrassing
  - Assessment: Is it minor? (de minimus)
    - If yes, disclose the record.
    - If no, continue.
- Step 2: Identify the public interest
  - Test: Shed light on gvt activities?
  - Assessment: weigh against privacy interest
    - Disclose if (1) equal or (2) public interest outweighs

# Personnel/Evaluation Records Compliance

### Notice Requirements

- Notify employee and requester within 24 hours of the agency decision
- Overnight mail notice is required if other notice fails
- The requester, custodian or subject may request an opinion from the Attorney General
- Redact any exempt information and provide the records

# Mixed Records

- Definition: record is "mixed" when it can be classified as
  - (1) more than one person's evaluation,
  - (2) more than one person's personnel record, or
  - (3) at least one person's evaluation and at least one person's personnel record.

#### Tests

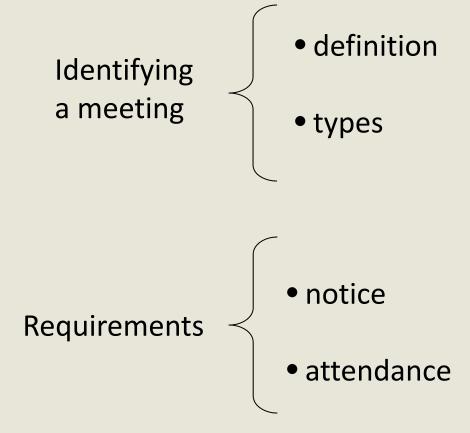
- Primary Subject(s) = evaluation-record test
- Secondary Subject(s) = personnel-record test

### Costs

- Open for inspection if requested
- Making the copies
  - The requester can require copies.
  - Probably can require mailing (Op. 2008-071)
- Charging for copies?
  - Only "actual costs of reproduction"
  - That includes mailing or faxing
  - Doesn't include employee time
  - \$25 in advance
  - Itemize the charges

## The Freedom of Information Act

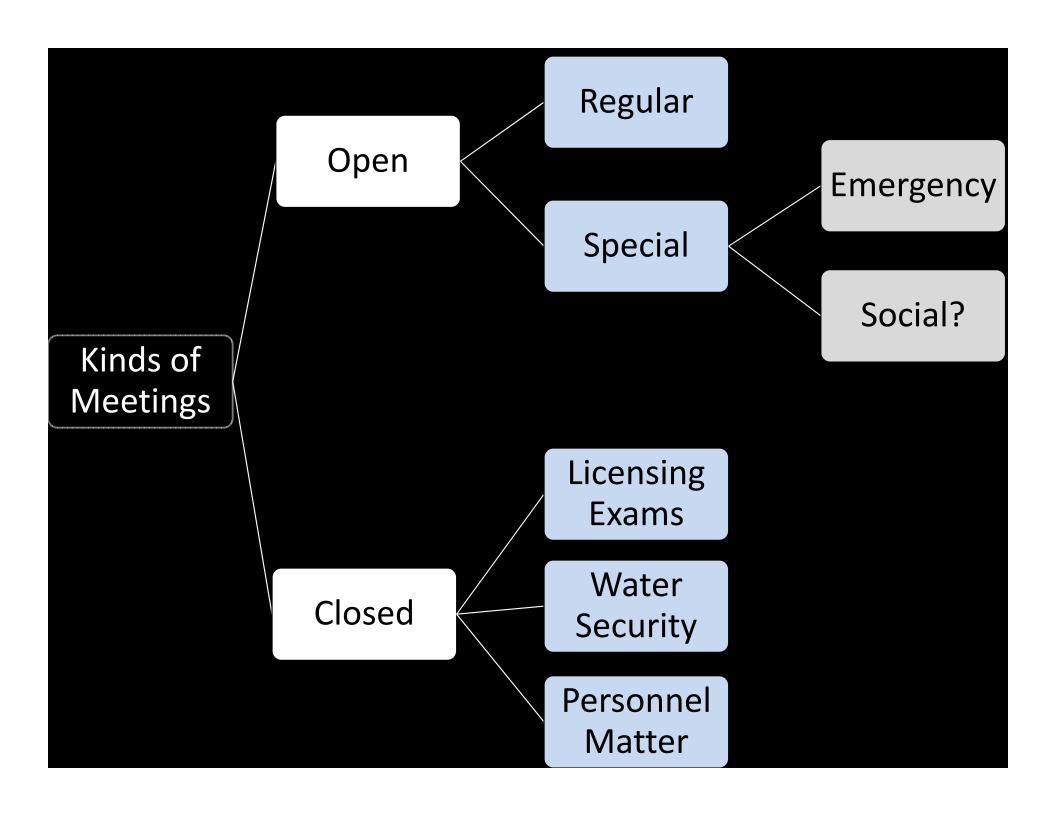
Step 2: Is the meeting covered?



Step 2: Is the meeting covered?

# What is a "meeting"?—definition

- A.C.A. 25-19-106(a): "all meetings, formal or informal, special or regular, of the governing bodies of all municipalities [and] counties...shall be public meetings."
  - In other words: "All meetings are public meetings."
  - But what's a 'meeting'?
- What's a governing body?
  - It's a body that can make decisions



# What if the meeting is covered? (Part 1)

#### **Notice** Requirements

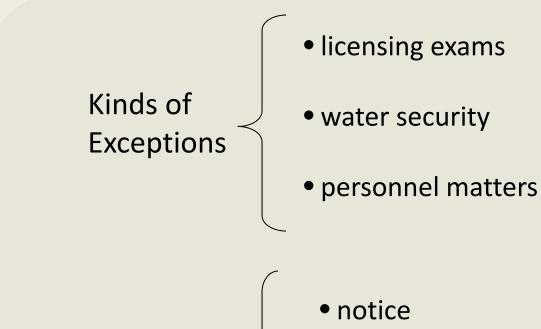
- Regular Meetings: [25-19-106(b)(1)]
  - (1) time and place must be given to
  - (2) anyone who asks
- Special/Emergency Meetings: [25-19-106(b)(2)]
  - (1) time, place, and date
  - (2) to news media
    - (a) in the county where the meeting's held, and
    - (b) located elsewhere that cover the regular meetings
  - (3) that have asked to be notified

# What if the meeting is covered? (Part 2)

Attendance not participation at meetings

#### The Freedom of Information Act

Step 3: Meetings Exemptions.



Procedure for using an exception

announcement

• limited attendance

#### **Step 3: Meetings Exemptions.**

#### **Personnel Matters**

 only for hiring, firing, appointing, promoting, demoting, disciplining, or resigning of a public employee



# Exec. Session Procedure Notice/ Announcement

Notice requirements still apply.

Must announce specific purpose before going in.

Must vote in **public** afterward or action is void.

#### Exec. Session—Attendance

Persons who can attend <u>by right</u>:
 all members of the governing body

- Persons who can attend <u>by invitation</u>:
  - interviewee for top administrative position
  - the top administrator, immediate supervisor, and employee

Persons who cannot attend:

Everyone else, including attorneys

#### **Enforcement**

- Action is <u>void</u> if no public vote
- Noncompliance in other respects renders action <u>voidable</u>
   Court will only invalidate the action when:
  - Plaintiff has given the body a chance to hold a meeting that conforms;
  - Remedy is sought to vindicate public as opposed to private interest;
  - The FOIA violation was substantial; and
  - The defendant knowingly violated the Act .

### Guides to Interpretation

Freedom of Information Handbook (16th ed.)

 Watkins & Peltz, Arkansas Freedom of Information Act (5th ed., 2009)

AG's website [www.arkansasag.gov/opinions]

#### The Freedom of Information Act

Thank You.

# Record Retention Laws for Arkansas Municipalities

David Schoen January 2016

# DESTRUCTION/RETENTION (Ark. Code Ann. 14-2-201 – 203)

- These sections provide for destruction of paper records and reproduction in another format
- Review these procedures carefully before destroying paper records

#### **HISTORY COMMISSION**

(Ark. Code Ann. 13-3-107)

• Before any records "other than ephemeral materials" are destroyed, city officials must advise the history commission in writing and give any records deemed to have historical value to the commission.

### Ark. Code Ann. 14-2-201 Authority--Requirements

• (a) The head of any county or municipal department, commission, bureau, or board may cause any or all records kept by the official, department, commission, or board to be photographed, microfilmed, photostated, or reproduced on or by film, microcard, miniature photographic recording, optical disc, digital compact disc, electronic imaging, or other process that accurately reproduces or forms a durable medium for reproducing the original when provided with equipment necessary for such method of recording.

• (b) At the time of reproduction, the agency head shall attach his or her certificate to the record certifying that it is the original record, and the certificate shall be reproduced with the original.

• (c) The device used to reproduce the records shall be such as to accurately reproduce and perpetuate the original records in all details.

#### ACA 14-2-202

• Reproduced records under this chapter are admissible as evidence in court.

# Ark. Code Ann. 14-2-203. Disposal, etc., of copied records

• (a) Whenever reproductions of public records have been made in accordance with § 14-2-201 and have been placed in conveniently accessible files or other suitable format and provision has been made for preserving, examining, and using them, the head of a ... city office or department may certify those facts ... to the mayor of a municipality, ... who shall have the power to authorize the disposal, archival storage, or destruction of the records.

• (b) Cities of the first class, cities of the second class, and incorporated towns may by ordinance declare a policy of record retention and disposal, provided that:

• (1) The city or town complies with any specific statute regarding municipal records; and

# Maintain for a period of at least three (3) years and in no event dispose of before being audited:

- (2) The following records are maintained permanently in either the original or electronic format as required by law:
- (A) Ordinances;
- (B) City council minutes;
- (C) Resolutions;
- (D) Annual financial audits; and
- (E) Year-end financial statements.

#### **COURT RECORDS**

• Sections 13-4-201 though -204 provide for the destruction of paper records once they have been reproduced in another format. Any handwritten document over fifty (50) years old or any document determined to be of historical value by the Ark. History Commission may not be destroyed.

## ACA 16-10-211 District Court Record Retention Schedule

#### Permanently maintain:

- (A) Case indices for all courts;
- (B) Case dockets for all courts;
- (C) Active warrants;
- (D) Waivers;
- (E) Expungement and sealed records;
- (F) Files concerning convictions under the Omnibus DWI or BWI Act, § 5-65-101 et seq.; and
- (G) Domestic battering files;

Maintain for a period of at least seven (7) years and in no event dispose of before being audited:

- (A) Complete case files and written exhibits for all courts;
- (B) Show cause orders;
- (C) Case information, including arrest reports and affidavits; and
- (D) Files concerning cases resulting in a suspended imposition of sentence; and

### Maintain for a period of at least three (3) years and in no event dispose of before being audited:

- (A) Bank reconciliations;
- (B) Check book registers and check listings;
- (C) Cancelled checks;
- (D) Bank statements;
- (E) Receipts;
- (F) Deposit collection records;
- (G) Receipts listings;
- (H) Distribution reports;

- (I) Receipt and disbursement journals;
- (J) Time payment records;
- (K) Citation book logs;
- (L) Citation books from each police department and sheriff's office;
- (M) Served warrants;
- (N) Copies of citations;
- (O) Alternative service or community service time sheets;
- (P) Uniform filing fees collection remittance forms and fine report; and
- (Q) Miscellaneous fee and fine collection reports.

#### Destruction of Court Records

(b) After a town, city, or county has maintained records for the time periods required by subdivisions (a)(2) or (3) of this section and after the records described in subdivisions (a)(2) or (3) of this section have been audited, the records may be destroyed.

#### Destruction of Court Records

- (c) When records are destroyed under subsection (b) of this section, the town, city, or county shall document the destruction by the following procedure:
- (1) An affidavit is to be prepared stating:
- (A) Which records are being destroyed and to which period of time the records apply; and
  - (B) The method of destruction.

(2) The affidavit is to be signed by the town, city, or county employee performing the destruction and one (1) employee of the governing body or, if applicable, governing bodies that contribute to the expenses of the court.

#### Destruction of Court Records

(d) In addition to the procedure described in subsection (c) of this section, the approval of the governing body or, if applicable, governing bodies that contribute to the expenses of the court shall be obtained before the destruction of district court records and an appropriate note of the approval indicated in the minutes of the governing body or bodies along with the destruction affidavit.

## ACCOUNTING RECORDS (Ark. Code Ann. 14-59-114)

Accounting records fall into three groups:

- 1. Support Documents (4 Years)
- 2. Semipermanent Records (7 years)
- 3. Permanent Records

But no destruction allowed prior to an audit!

### Support Documents (4 Years)

- · cancelled checks,
- invoices,
- bank statements,
- receipts,
- deposit slips,
- bank reconciliations,

- check book registers or listings,
- receipts listings,
- monthly financial reports,
- payroll records,
- budget documents, and
- bids, quotes, and related documentation.

### Semipermanent Records (7 Years)

- fixed assets and equipment detail records,
- investment and certificate of deposit records,
- journals, ledgers, and subsidiary ledgers,
- annual financial reports.

• For investment and certificate of deposit records, the seven (7) years of required maintenance begins on the date of maturity

#### Permanent records

- council minutes,
- ordinances,
- resolutions,
- employee retirement documents, and
- annual financial audits.

• shall be maintained permanently.

### WATER and SEWER ACCOUNTING (Ark. Code Ann. 14-237-112)

• Same provisions as for Accounting Records - see above.

### POLICE TICKET BOOKS (Ark. Code Ann. 16-10-211(a)(3)(K) & (L)).

• Three years

• but must be kept until audited

### POLICE DEPARTMENT RECORDS (Ark. Code Ann. 14-2-204)

#### Permanently or 7 years, as the council may determine:

- Closed municipal police case files for felony and Class A misdemeanor offenses
- expungement orders of municipal police cases.

- after ten (10) years, these may be copied and maintained under <u>Ark.</u> Code Ann. 14-2-203.
- However, records constituting evidence of sexual offenses or violent offenses resulting in convictions are regulated by <u>Ark. Code Ann. 12-12-104.</u>

#### 3 Year Police Records

- Accident, incident, and offense reports,
- fine and bond and parking meter records,
- radio logs and complaint cards,
- employment records,
- payroll sheets,
- time cards, and leave requests.

- They may then be copied electronically according to 14-2-203 or disposed of.
- But see personnel records presentation prior to disposing of employment or payroll records.

### **Conducting Your Council Meeting**

January 13, 2016 2:30pm to 3pm

Mark R. Hayes
Director of Legal Services
Arkansas Municipal League

# OUTLINE

- Setting the Agenda
  - + Procedural Rules
- Order of meeting
  - + Minutes, committee reports, old/new business, adjourn, etc..
- \* Motions
- × Public Comments

#### Remember to Have an Agenda

- × Agenda
  - + How is it set?
  - + By whom?
  - + When is it set?
- Time certain before the meeting?
  - + During the meeting?

#### January Rules Meeting

- × A.C.A. § 14-43-501
  - + At the first meeting in January . . .
  - + ORGANIZE!
- **× AML Procedural Rules**
- By doing so you lessen debate over form and encourage debate over substance.

# PROCEDURAL RULES FOR COUNCIL MEETINGS

- Order of the Meeting
  - + Call to order
  - + Roll call
  - + Reading of the minutes (previous meeting)
  - + Reports of boards or standing committees
  - + Reports of special committees
  - + Unfinished (Old) business
  - + New business
  - + Announcements
  - + Citizen Commentary
  - + Adjournment

### PROCEDURAL RULES: CALL TO ORDER

- Let's make this easy
  - + Who's there . . . And who isn't?
  - + Mayor = Count heads
  - + If there IS a quorum . . .
    - Call the meeting to Order, declare a quorum present and start the business agenda.
  - + If there ISN'T a quorum . . .
    - ×Go home.

# ROLL CALL

- **×**So.....
  - +Take the roll and,
  - +Keep a record of the same
  - +Rules may require that the clerk or the recorder call the roll.
- **×**Simple

#### PROCEDURAL RULES: READING OF THE MINUTES

- \*This involves . . .
- × Ready . . .
  - +Reading the minutes of the previous meeting.
  - +Mayor: "Clerk (or Recorder), please read the minutes unless there's a motion to dispense with same."
    - Postpone reading/passage the minutes to another meeting

# PROCEDURAL RULES: READING OF THE MINUTES

- Minutes can be mailed early
  - +If so, a verbal reading of the minutes is not required.
- Use your time well
- Minutes aren't transcripts

# TRANSCRIPT MEANS...

- According to Webster...
  - +a: a written, printed, or typed copy; especially: usually a typed copy of dictated or recorded material
  - +b: an official or legal and often published copy <a court reporter's transcript>; especially: an official copy of a student's educational record

## MINUTES MEAN...

- \*Webster again...
  - +a: a brief note (as of summary or recommendation)
  - +b: the official record of the proceedings of a meeting

#### PROCEDURAL RULES: REPORTS OF COMMITTEES

- \*Again, let's not overly complicate things.
- \*If you have committees, set a process for them to report.
  - +Committee reports are, effectively, for informational purposes, AND
  - +To make recommendations to the council as a whole.

# PROCEDURAL RULES: REPORTS OF COMMITTEES

- Chair of committee should report
  - +Order: (1) Chairmen of the standing committees, then (2) the chairmen of special committees
- \*Your own records should define the committee, the chair, etc.

### PROCEDURAL RULES: NEW BUSINESS

- This is the meat of your meeting.
  - + It is critical that your elected officials all have the ability to get new business items on the agenda.
- Again, what are your local rules?
  - + This is where the January rule-setting meeting is critical.
- Mayor, ask if anyone has any new business.

### PROCEDURAL RULES: ANNOUNCEMENTS

- \* Again, simple, simple, simple.
- \* When business is concluded . . .
  - +Mayor, ask for any announcements.
- It is okay to set an order by which folks will be asked, or to ask generally.
- Whatever works for you.

### PROCEDURAL RULES: ADJOURNMENT

- When business appears complete, a member (council or board) may move to adjourn.
- Mayor, you may ask for such a motion if one hasn't yet been made.
  - + Vote taken, and if it passes, the meeting is adjourned.
- Mayor, you should state that the meeting is adjourned.

# PROCEDURAL RULES: MOTIONS AND THE LIKE

- \* A quick word or two:
  - +Mayors run the meeting
  - +Mayors must call on those on the council wishing to speak, and must recognize motions even if the mayor isn't in favor of same.
- Decorum is required by all
- \* Again, debating <u>substance</u> is true democracy; debating <u>form</u> is a waste of time.

#### PROCEDURAL RULES: MOTIONS AND THE LIKE

- Steps in Handling a Motion
  - + Member addresses the mayor
  - + Mayor recognizes the member
  - Member states his or her motion
  - + Another member seconds the motion
  - + Mayor re-states the motion (confirmation)
  - + If debatable, members discuss the motion
  - + Clerk or recorder takes the vote
  - Mayor announces the result
- × The Basics:
  - + Motion → Second → Discussion → Vote

#### PROCEDURAL RULES: MOTIONS AND THE LIKE

- \* More rules to remember . . .
  - + Any member of the council may propose a motion
  - + As soon as the member is recognized by the mayor, the member is entitled to the council's undivided attention.
  - + Discussion or debate not usually permissible until a motion has been re-stated by the mayor.
  - + If the motion is not seconded, it is defeated.
  - + Debate is restricted to the motion under consideration

- Have Rules for Public Speech
- General Ideas
  - +To allow or not to allow, that is the question.
  - +And how long one gets to chat, etc.
- Topics
  - +Time, place, and manner—NO CONTENT RESTRICTIONS! See U.S. Const. Amend. I.
- **× USE AN EGG TIMER!**

- \*Public Comments can be put at the beginning of a meeting, in the middle, or at the end.
- Can be directed to agenda and/or non-agenda items.
- \*Have a structure . . . And a set of rules

- **×** For example:
  - + Issues not on the agenda may be addressed.
    - ×While items on the agenda will be allowed for public comment when being discussed by the Council.
  - + Have a time limit on the length of any individual citizen's comment.
    - ×May be revoked in instances of inappropriate language or subject matter

- + Have the citizen state his or her name, address, and a concise statement of his or her position or concern.
- + Remarks should be addressed to the Mayor or the Council as a whole, and not to any individual members of the Council.
- +Only the Mayor, the Council and the person with the floor should speak during this time.

#### × Agenda Items

- + Complete a speaker's card listing the specific agenda item to be discussed
- +Give the card to the City Clerk prior to the time when the item is called.
- +Enforce maximum time limits (typically 5 minutes)
- + Mayor calls for speakers after the item is called and before Council discussion on the item.

## PUBLIC COMMENTS (CONT'D.)

#### Non-Agenda Items

- Use the Public Comment portion of the meeting (typically at the end of Old Business and before adjournment)
- + Speakers must fill out a comment card, and indicate they are planning to speak about a non-agenda item.
- + Give the comment card to the City Clerk prior to adjournment.
- + Enforce time limits (typically 5 minutes)

#### THE END!

- \* Thanks for your attendance...
- \* And good questions.
- We're honored to represent you!

- \* Mark R. Hayes
- \* mhayes@arml.org
- × 501-978-6102